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No. 89-1298

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

INGERSOLL-RAND COMPANY,
Petitioner,

v.

PERRY MCCLENDON,
Respondent.

On Writ of Certiorari to the Supreme Court of Texas

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act of 1974 ("ERISA") preempts a state common law claim that an employer has unlawfully discharged an employee in order to interfere with his attainment of benefits under an ERISA-covered pension benefit plan.

PARTIES TO THE PROCEEDING

The parties to the proceedings in the court below were: Perry McClendon and the Ingersoll-Rand Company.*

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* Ingersoll-Rand Company has an interest in the following corporate entities and partnerships: Dresser-Rand Company; Dresser-Rand Machinery; Dresser-Rand Italia; Dresser-Rand S.A.; Dresser-Rand Canada, Inc.; Dresser-Rand Compression Services S.A.; Dresser-Rand Service Personnel B.V.; Dresser-Rand Japan Ltd.; Dresser-Rand B.V.; Turbodyne S.A. de C.V.; Dresser-Rand Singapore Pte. Ltd.; Dresser-Rand de Venezula S.A.; Dresser-Rand GmbH; Kongsberg Dresser Power, Inc.; Kongsberg Dresser Power Pte. Ltd.; KDP Commercio E. Industrial Ltd.; Kongsberg Dresser Power A/S; Dresser-Rand Holding Company; Dresser-Rand Overseas Sales Company; Dresser-Rand Sales Company, S.A.; Southwest Industries, Inc.; Turbodyne Electric Power Co.; Tepco/Pembroke Power, Inc.; Dresser-Rand U.K. Ltd.; Dresser-Rand Service S.a.r.e.; Norton/Torrington Ceramic Bearings Company; Nastach, Inc.; Ingersoll-Rand (India) Limited; and Niject Services Company.

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OPINIONS BELOW

The opinion of the Supreme Court of Texas (Pet. App. 1a-16a) is reported at 779 S.W.2d 69. The opinion of the Court of Appeals of Texas (Pet. App. 17a-24a) is reported at 757 S.W.2d 816. The opinion of the district court granting summary judgment for petitioner (Pet. App. 25a-26a) is unreported.

JURISDICTION

The judgment of the Supreme Court of Texas was entered on October 18, 1989. A timely motion for rehearing was denied on November 15, 1989. Pet. App. 27a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

Section 502 of ERISA, 29 U.S.C. § 1132, provides in pertinent part:

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or a beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

* * * *

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought

by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

* * * *

(h) Service upon Secretary of Labor and Secretary of the Treasury

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) of this section which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) of this section on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

Section 510 of ERISA, 29 U.S.C. § 1140, provides:

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C.A. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled

under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

Section 514 of ERISA, 29 U.S.C. § 1144, provides in pertinent part:

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

* * * *

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

Section 411(d)(1) of the Internal Revenue Code, 26 U.S.C. § 411(d)(1), provides in pertinent part:

(d) Special rules.—

(1) Coordination with section 401(a)(4).—A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)), or

(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

STATEMENT

1. In 1974, after almost a decade of study, Congress enacted the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 ("ERISA"). Congress found that "the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; [and] that they are affected with a national public interest." 29 U.S.C. § 1001(a).

Congress further found that "despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered;

[and] that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits." *Id.* Congress therefore declared that the policy of ERISA is "to protect . . . the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service," and to protect the interests of participants in all types of employee benefit plans "by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(c), (b).

Specifically, in Title I of ERISA, Congress established certain minimum standards applicable to an employer's design and maintenance of its employee benefit plans.[1] Among other things, it imposed new requirements for reporting and disclosure relating to such plans. 29 U.S.C. §§ 1021-1031. It limited the age and service conditions that an employer may impose for "participation" in a pension plan. 29 U.S.C. § 1052. It required that an employee's normal retirement benefit "accrue"—*i.e.*, be earned—more or less ratably during the period of the employee's participation in the plan, and that the employee's right to his accrued benefit "vest"—*i.e.*, become nonforfeitable—after a minimum service period. 29 U.S.C. §§ 1053, 1054. With certain exceptions, it further required that an employer establish a trust and make periodic contributions sufficient to fund promised benefits

[1] ERISA is organized in four titles. Title I of ERISA—the so-called "labor provisions"—establishes the federal law occuying the field of employee benefits. Title II of ERISA—the so-called "Code provisions"—makes amendments to the Internal Revenue Code, parallel to those Title I provisions that affect "qualified plans" under Section 401(a) of the Code. Title III of ERISA concerns coordination of administration among the various federal agencies. And Title IV of ERISA establishes the plan termination insurance program, administered by the Pension Benefit Guaranty Corporation.

on a sound actuarial basis. 29 U.S.C. §§ 1082-1085. It also established certain standards of conduct for fiduciaries of employee benefit plans. 29 U.S.C. §§ 1101-1114. And, finally, it established comprehensive rules for the administration and enforcement of employee rights in benefit plans that the statute's minimum standards are designed to protect and regulate. 29 U.S.C. §§ 1131-1145.

Among the enforcement rules so created are certain provisions aimed at protecting participants from wrongful interference with attainment of rights under the employee benefit plans. Section 510 of ERISA makes it "unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan . . . ." 29 U.S.C. § 1140. In addition, Section 1012(a) of Title II of ERISA added Section 411(d)(1) to the Internal Revenue Code, which states that a plan may be required to provide an accelerated vesting schedule if "there has been a pattern of abuse under the plan (such as dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated . . . ." 26 U.S.C. § 411(d)(1)(A).

ERISA makes the civil enforcement "provisions of [Section 502 of ERISA] applicable in the enforcement of [Section 510]." 29 U.S.C. § 1140. Section 502 of ERISA authorizes a plan participant, beneficiary, or fiduciary to bring suit "(A) to enjoin any act or practice which violates any provision of [Title I of ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief . . . ." 29 U.S.C. § 1132(a)(3). It also confers exclusive jurisdiction over such suits on the federal courts. 29 U.S.C. § 1132(e)(1). Finally, it requires that a certified copy of the complaint in any such action be served upon both the Secretary of Labor and the Secretary of Treasury, either of whom may intervene as a matter of right in the action. 29 U.S.C. § 1132(h).

ERISA caps these substantive and enforcement provisions by providing, in Section 514, that, except where expressly noted otherwise,[2] "the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any [covered] employee benefit plan. . . ." 29 U.S.C. § 1144(a). Section 514 defines the term "State law" to "include[] all laws, decisions, rules, regulations, or other State action having the effect of law, of any State," 29 U.S.C. § 1144(c)(1), and the term "State" to "include[] a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans" covered by the statute, 29 U.S.C. § 1144(c)(2).

2. Petitioner, Ingersoll-Rand Company, hired respondent, Perry McClendon, in August 1972 as a salesperson and distributor of construction equipment. Pet. App. 1a-2a; J.A. 24-26. At the time, petitioner provided respondent with a "Compensation Agreement" that detailed the commissions that respondent would earn on any sales made during the course of the next year. Pet. App. 2a, 18a, 19a; J.A. 28. Petitioner thereafter updated the "Compensation Agreement" on an approximately annual basis. Pet. App. 18a. Petitioner also allowed respondent to participate in its employee benefit plans, including its ERISA-covered pension plan. Pet. App. 2a, 18a; J.A. 28, 38-39.

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[2] ERISA expressly excepts from preemption: (1) any cause-of-action which arose, or any act or omission which occurred, before January 1, 1975, *see* 29 U.S.C. § 1144(b)(1); (2) state laws regulating insurance, banking, or securities, *see* 29 U.S.C. § 1144(b)(2); (3) any generally applicable criminal law of a state, *see* 29 U.S.C. § 1144(b)(4); (4) the Hawaii Prepaid Health Care Act, *see* 29 U.S.C. § 1144(b)(5); (5) qualified domestic relations orders, *see* 29 U.S.C. § 1144(b)(7); or (6) certain state laws regarding health plans that are necessary for the state to be eligible to receive reimbursements under Title XIX of the Social Security Act, *see* 29 U.S.C. § 1144(b)(8).

With the exception of an eight-month period in 1977 (J.A. 25-26), respondent was continuously employed by petitioner for approximately the next ten years. Pet. App. 2a. When the market for construction equipment declined in the fall of 1982, however, petitioner terminated the employment of respondent as part of a company-wide reduction-in-force. Pet. App. 2a, 24a; J.A. 21, 29, 34-35. At the time of his termination, respondent had accumulated nine years and eight months of actual service with petitioner. Pet. App. 2a, 18a; J.A. 25. Without investigating the matter or discussing his pension rights with any representative of petitioner (J.A. 39-41), respondent apparently concluded that he was four months shy of vesting under petitioner's pension plan. Pet. App. 2a, 18a; J.A. 41-43.

3. Respondent thereafter initiated suit against petitioner in state court for wrongful discharge. Pet. App. 2a & n.2; J.A. 5-7, 14-17, 65-71. Respondent principally claimed that petitioner had breached both a contract of employment with him and a duty of good faith and fair dealing in connection with the employment relationship. Pet. App. 2a & n.2; J.A. 6, 14-15, 66-67. Respondent alternatively claimed that petitioner had wrongfully terminated him in order to prevent his vesting under its pension plan. Pet. App. 2a & n.2; J.A. 14, 66-68. As remedies for these allegedly unlawful acts, respondent asked to be awarded, among other things, lost commissions, lost pension and other benefits, damages for emotional distress, and punitive damages. J.A. 6-7, 15-16, 67-68.

After a period of discovery, petitioner moved for summary judgment. In support of its motion, petitioner was able to show that the construction industry had suffered a "devastating" recession in 1982; that, as a consequence, petitioner had implemented a company-wide reduction-in-force; that respondent was terminated as part of this company-wide reduction-in-force; and that respondent was an at-will employee at the time of his termination.

J.A. 21-22, 29, 31-35, 37, 53-54, 58. In addition, petitioner was able to show both that respondent's claim of interference with pension benefits was based entirely on his subjective impression that petitioner had saved expenses by terminating him prior to his perceived vesting date, and that, contrary to his perception, respondent was, prior to his termination, in fact fully vested under the terms of the pension plan (because, under the plan's "break-in-service" rules,[3] respondent had received imputed vesting credit for the eight-month period in 1977 when he was not actually employed by petitioner). J.A. 41-43, 43-45, 60-61. The trial court rendered summary judgment in favor of petitioner. Pet. App. 25a-26a.

4. The court of appeals affirmed. Pet. App. 17a-24a. It initially held (*id.* at 20a-22a) that, contrary to respondent's claim, the "Compensation Agreement" in no way limited the circumstances in which petitioner could dissolve its employment relationship with respondent. The court further held (*id.* at 22a-24a) that, under Texas law, no covenant of good faith and fair dealing is implied into the employment relationship. Finally, it rejected respondent's claim that he had been discharged for an illicit reason, finding (*id.* at 24a) that the undisputed evidence showed that respondent had "incorrectly

[3] Attachments not included in the record below to a letter sent by petitioner to respondent prior to the filing of the summary judgment motion explain the break-in-service rules of the plan and their effect on respondent. *See* J.A. 62. These break-in-service rules were designed to comply with a regulation of the Treasury Department, which provides, in pertinent part, that:

> In determining a participant's period of service for vesting purposes, a plan shall take into account the following periods of severance—
>
> (A) If an employee severs from service by reason of a quit . . . and the employee then performs an hour of service within the meaning of 29 C.F.R. 2530.200b-2(a)(1) within 12 months of the severance from service date, the plan is required to take into account the period of severance.

26 C.F.R. § 1.410(a)-7(d)(1)(iii).

concluded that being discharged before ten years of service would prevent him from collecting certain benefits," and that petitioner "did nothing more than react to an economic downturn by reducing its sales force."

5. In a 5-4 decision, the Supreme Court of Texas reversed and remanded. Pet. App. 1a-16a. It declined to address respondent's claim that a duty of good faith and fair dealing should be implied into the employment relationship between petitioner and respondent. *Id.* at 2a, n.1. Instead, it held that a cause-of-action lies under Texas common law against an employer whose "principal reason" for terminating an employee is to avoid contributing to or paying benefits under the employee's pension fund. *Id.* at 1a, 5a. In reaching this conclusion, the court expressly held that Section 514 of ERISA does not preempt such a state common-law cause of action. *Id.* at 5a n.3.

a. The majority of the Supreme Court of Texas began its opinion by noting (Pet. App. 3a) that, while "Texas courts have traditionally followed the employment at-will doctrine," they have placed "numerous exceptions . . . on its application." The majority explained (*id.* at 4a) that many states, including Texas, "have accepted the principle that public policy can limit an employer's power to discharge at-will employees." Specifically, it pointed out (*id.* at 4a-5a) that the United States District Court for the Eastern District of New York, construing New York law, "has recognized a cause of action for wrongful discharge when an employee alleges that he was terminated to deprive him of pension benefits."

The majority next found (Pet. App. 5a) that the State of Texas "has an interest in protecting employees' interests in pension plans." In support of this conclusion, the court cited (*id.* at 5a) both a Texas statute (Tex. Rev. Civ. Stat. Title 110B), which provides pensions for public employees of the State of Texas, and Section 510 of ERISA. Indeed, the majority stated (Pet. App. 5a) that

"[t]he very passage of ERISA demonstrates the great significance attached to income security for retirement purposes."

The majority then concluded (Pet. App. 5a) that "public policy favors the protection of integrity in pension plans and requires in this case an exception to the employment at-will doctrine." Specifically, it held that (*id.* at 5a) an employee should be "allow[ed] recovery when [he] proves that the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." In so concluding, the majority conceded (*id.* at 5a n.3) that there are cases holding "that a claim for wrongful discharge in order to avoid the payment of pension funds is preempted by ERISA." But the majority determined (*id.* (emphasis in original)) that these cases are distinguishable because respondent "is *not* seeking lost *pension benefits* but is instead seeking lost future wages, mental anguish and punitive damages as a result of the wrongful discharge."

b. Justice Cook, joined by Chief Justice Phillips and Justice Hecht, filed a dissenting opinion. Pet. App. 6a-13a. Justice Cook agreed with the majority (*id.* at 6a) that "ERISA demonstrates the great significance attached to income security for retirement." But he found it even more significant (*id.*) that ERISA "confers upon employees a federal version of the cause of action created by this court, confines litigation of the federal cause of action to the federal courts, and preempts the state cause of action." Significantly he found (*id.* at 7a) that, under Section 514 of ERISA, "all provisions of the subchapter in which § 510 is contained preempt state laws that 'relate to' employee benefit plans," and that "[t]here can be no doubt that the law created today by [the majority] relates to a pension plan and directly conflicts with the specific provision of § 510 establishing a federal cause of action under ERISA." Indeed, he found (*id.* at 7a-8a) that, "because preemption of the claim at issue

leaves plaintiff with a cause of action that can be litigated only in federal court, ERISA preempts the [state] forum as well as [the] cause of action."

Justice Cook strongly objected (Pet. App. 8a-9a) that the majority opinion "misleads employees by providing them with an imaginary claim." While he believed (*id.* at 9a) that "ERISA's provisions make it doubtful that a state court even has power to adjudicate the new cause of action," he was certain (*id.*) that "astute defendants need not wait to find out. They need only remove to federal court and raise a defense of preemption." Justice Cook expressed (*id.*) "regret [for] the confusion and prolonged litigation we have thrust upon employers and employees in their efforts to resolve disputes concerning their pension plans."

Justice Cook also objected (Pet. App. 9a-11a) that the majority opinion "undercuts the very purpose of summary judgment proceedings, which are designed to eliminate patently unmeritorious claims and untenable defenses." He noted (*id.* at 10a) that, under ERISA, "an employee must establish more than the mere fact that the termination of his employment resulted in a monetary savings to his employer." Yet he observed (*id.*) that, under the majority's opinion, "an employee is presumably guaranteed a jury trial by merely alleging that the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." Justice Cook concluded (*id.* at 10a-11a) that the majority's approach to the summary judgment issue would both "unduly chill[] an employer's right to terminate an at-will employee with or without cause" and open the "proverbial 'floodgates of litigation . . . .'"

c. Justice Gonzalez also filed a dissenting opinion. Pet. App. 13a-16a. He agreed with Justice Cook's conclusion (*id.* at 13a-14a) that "this cause of action is preempted by ERISA" and that "it will be very difficult, if not im-

possible, to filter out meritless cases by summary judgment as a result of today's opinion." He further found (*id.* at 14a-16a) that "the federal authority that the court finds persuasive is questionable," and noted that other courts had refused to follow it.

SUMMARY OF ARGUMENT

In ERISA, Congress wanted to ensure that the benefit promises that employers make are kept. It thus devised a comprehensive and reticulated regulatory scheme which, among other things, protects employees against purposeful interference by their employer with attainment of their rights under an employee benefit plan. The Supreme Court of Texas, by its decision below, has attempted to create an alternative set of rights and remedies available to an employee in such a situation. The language, legislative history, and purpose of ERISA's preemption provision, however, make it clear that the Supreme Court of Texas may not lawfully do so.

A. By the plain terms of Section 514(a) of ERISA, the statute preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144(a). As this Court has repeatedly recognized, this expansive language occupies for Federal authority the sole power to regulate the field of employee benefit plans. *See, e.g., Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981). Specifically, Section 514(a) displaces any state law that has "a connection with or reference to" an ERISA-covered plan. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983).

The state common law claim recognized by the court below plainly "relates to" an ERISA-covered plan in this sense. Absent "reference to" petitioner's ERISA-covered pension plan, respondent simply would have no cause-of-action at all under Texas law. Moreover, the purpose and

effect of the Texas law are to insulate from wrongful interference the employee's right to benefits promised under the pension plan—the very heart of the plan itself. Indeed, the law seeks to protect vesting rights—substantive rights that ERISA itself requires the plan to afford to employees. As an enforcement mechanism for benefit rights brought into being by ERISA and provided by an ERISA-covered plan, the Texas law clearly "relates to" that plan and must be preempted.

B. The structure of ERISA confirms that the cause-of-action recognized by the court below "relates to" an ERISA-covered plan, because ERISA itself contains provisions to secure the rights of employees against improper threats of employer-interference with attainment of promised benefits. These provisions evidence the understanding of Congress that such laws "relate to" the plans covered by the statute.

Specifically, Section 510 of ERISA bars employers from terminating or discriminating against employees for the purpose of interfering with their attainment of rights under a plan. *See* 29 U.S.C. § 1140. It prevents employers from circumventing, and thus gives meaning to, the vesting and other minimum standards established by ERISA and contained in pension plans. It is thus part of the interrelated scheme of minimum standards that Congress devised to ensure that benefit promises are kept. The Congress enacting Section 510 must have understood it to "relate to" the plans that ERISA was seeking to protect and regulate.

Two other provisions of ERISA confirm this congressional understanding. First, as a parallel to Section 510, ERISA enacted Section 411(d)(1) of the Internal Revenue Code, under which a plan may be required to provide an accelerated vesting schedule if there has been a pattern of abuse—such as dismissal of employees before they became vested under a plan; such a direct regulation of the terms of a plan by a parallel ERISA provision

demonstrates that Congress understood Section 510, and thus any comparable state law, indirectly to have this relation as well. Second, Section 502 of ERISA is expressly designated as the enforcement mechanism for Section 510 claims and, as this Court has made clear, Section 514 of ERISA is properly read to encompass, and thus to preempt, all state law causes-of-action for claims within the scope of Section 502. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 52-54, 57. The cause-of-action recognized by the court below states such a claim.

C. The legislative history of the statute confirms that, in enacting Section 514, Congress understood that ERISA would preempt, among other things, any state law that, like Section 510 of ERISA, seeks indirectly to protect rights under employee benefit plans by prohibiting employment decisions that might otherwise purposefully defeat rights under ERISA-covered plans. The bills passed by the House and Senate purported to preempt only state laws relating to specific subjects covered by ERISA. The conference committee rejected these provisions as unduly narrow and instead enacted language designed to reserve regulation of the entire field of employee benefit plans to the federal scheme. In fact, the record of the committee's deliberations indicates that Section 510 was viewed as a critical component of the federal scheme; that Congress deliberately designed Sections 502, 510, and 514 to form an interrelated system for safeguarding employees' rights under plans; and that Section 514's "relate to" language was understood to subsume—and extend beyond—all subject matters regulated by ERISA, including the subjects addressed in Sections 510 and 502.

D. The preemption of state laws that, like Section 510, seek indirectly to protect rights under employee benefit plans by prohibiting employment actions taken for the purpose of defeating rights under those plans is consistent with, and indeed mandated by, the purpose of Section 514 of ERISA. Congress enacted that provision to save plans and plan sponsors from the administrative and financial burdens produced by multiple and potentially conflicting regulations. Allowing state-law based actions for wrongful interference with rights under plans would, however, potentially subject plan sponsors to multiple jurisdictional and procedural rules, different substantive standards of prohibited conduct, and far-reaching damages claims. As a consequence, plan sponsors would have a strong incentive to take actions detrimental to the interests of plan participants—by, for example, declining to establish plans, deciding to eliminate existing plans, or altering the design of plans to reduce the likelihood that interference-type claims will be asserted. In Section 510, Congress deliberately and carefully crafted the rights, procedures, and remedies so as not to discourage the creation and maintenance of employee benefit plans. The same cannot be said for the patchwork quilt of laws, procedures, and remedies that states might choose to impose. Accordingly, preemption is necessary.

E. The arguments advanced by respondent against preemption are without merit. That respondent is no longer seeking lost pension benefits as part of his remedy does not defeat preemption: his cause-of-action is still one that "relates to" an ERISA-covered plan and that is within the scope of Sections 502 and 510 of ERISA. Moreover, a law may "relate to" an ERISA-covered plan even though it imposes obligations only on the employer and does not directly require the payment of benefits or regulate the administrative activities of the plan. Many of ERISA's obligations—such as recordkeeping obligations and funding obligations—are imposed only on the employer. These obligations have a fundamental "connection with or reference to" the plans regulated by ERISA, and the states clearly cannot regulate the employer-activities to which those obligations are directly addressed. The same conclusion should be true for Section 510 and the employer-activities to which it (or any comparable state law) is addressed. Indeed, with the

exception of the court below, the federal and state appellate courts to address this issue have uniformly so concluded.

ARGUMENT

ERISA PREEMPTS A STATE COMMON LAW CLAIM THAT AN EMPLOYER HAS DISCHARGED AN EMPLOYEE IN ORDER TO INTERFERE WITH ATTAINMENT OF BENEFITS UNDER AN ERISA-COVERED PLAN

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). Specifically, in enacting ERISA, Congress wanted to ensure that the benefit promises that employers make are kept. *See Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 510 (1981). It thus devised a "comprehensive and reticulated" regulatory scheme which requires, among other things, that normal retirement benefits be earned—*i.e.*, "accrue"—more or less ratably during the period of employees' participation in a pension plan, that employees "vest" in their accrued benefits after a minimum service period, that employers make certain contributions to a trust to fund promised pension benefits on an actuarially sound basis, and that employees be protected against purposeful interference with attainment of their rights under the plan. *See Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361 (1980); *see also* 29 U.S.C. §§ 1052-1054, 1082, 1140.

The Supreme Court of Texas, by its decision below, has attempted to create an alternative set of rights and remedies available to an employee who claims that his employer has discharged him in order to prevent him from receiving promised pension benefits. The language, legislative history, and purpose of ERISA's preemption provision, however, make it clear that the Supreme Court of Texas has no authority to superimpose on ERISA its

own view of the appropriate rights and remedies available to employees in such situations.

A. The State Common-Law Claim Recognized By The Court Below "Relates To" An ERISA-Covered Plan Within The Meaning Of Section 514 Of ERISA

"[T]he question whether a certain state action is preempted by federal law is one of congressional intent. 'The purpose of Congress is the ultimate touchstone.'" *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45 (1987) (citations omitted). As this Court has repeatedly observed, the purpose of Congres in enacting ERISA's preemption provision was the "reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans." *Id.* at 46. *See also Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24 n.26 (1983); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 523. Thus, by the plain terms of Section 514(a), "the provisions of [ERISA] . . . supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144(a). The common-law claim recognized by the court below is plainly such a state law.

This Court has previously noted the "expansive sweep" of Section 514. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 47. It has held the provision applicable to state common-law as well as to state statutory claims. *See, e.g., id.* at 47-48; *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 62 (1987). It has further held that "[t]he pre-emption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements" (*Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985)). Indeed, while acknowledging that the provision "gives rise to some confusion where, as here, it is asserted to apply to a state law ostensibly regulating a matter quite different from pension plans" (*Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 523,

524), the Court has "emphasized that the pre-emption clause is not limited to 'state laws specifically designed to affect employee benefit plans'" (*Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 47-48), and that "even indirect state action . . . may encroach upon the area of exclusive federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 525. Specifically, the Court has held that a state law "relates to" an ERISA-covered plan and is preempted if it has "a connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983).

The state common-law claim recognized by the court below plainly "relates to" an ERISA-covered plan in this sense. Absent "reference to" petitioner's ERISA-covered pension plan, respondent simply would have no cause-of-action at all under Texas law.[4] Moreover, the purpose and effect of the Texas law is, as the Supreme Court of Texas admitted, to protect "employees' interests in pension plans" and to ensure that an employer cannot avoid "paying benefits under the employee's pension fund" (Pet. App. 5a). The Texas law thus seeks to insulate from wrongful interference the employee's right to attain benefits promised under an ERISA-covered pension plan—the very heart of the plan itself. *See Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 510. Indeed, the law expressly seeks to protect vesting rights under an ERISA-covered plan—substantive rights that ERISA

[4] Respondent's claim under Texas law plainly depends on reference to petitioner's pension plan and, indeed, to its particular terms. Respondent claims that petitioner terminated him for the purpose of interfering with his vesting under the pension plan. Unbeknownst to respondent, however, he was fully vested under the pension plan at the time of his termination. Thus, the application of the plan's complex vesting provisions would be the focus of petitioner's defense, since the claim that the employer acted to deprive the employee of vesting is less credible when the employee was already vested at the time of the act. In this way, both the cause-of-action and the defense have a tangible and significant connection to an ERISA-covered plan: both depend on the existence of the plan and its particular terms.

itself requires the plan to afford to employees. As an enforcement mechanism for benefit rights brought into being by ERISA and provided by an ERISA plan,[5] the Texas law clearly "relates to" petitioner's ERISA-covered plan in its very essence and as applied to such plan must be preempted.[6]

B. The Structure Of ERISA Confirms That The Cause Of Action Recognized By The Court Below "Relates To" An ERISA-Covered Plan Within The Meaning Of Section 514 Of ERISA

That this Texas common-law "relates to" an ERISA-covered benefit plan is structurally confirmed by the provisions of ERISA that Section 514 states "shall supersede any and all state laws" relating to an ERISA-covered plan. 29 U.S.C. § 1144(a). The structure of these provisions reveals a deliberate effort to secure the rights of employees under pension plans against potential threats to enjoyment of those rights, including improper employer-interference with attainment of promised benefits. In other words, these provisions demonstrate that Congress understood that such laws "relate to" employee benefit plans covered by the statute.

[5] The remedy for violation of the Texas law may be back or front pay or other damages paid by the employer. *See* Pet. App. 5a n.3. But, as with any other law prohibiting a particular kind of employer-conduct, the purpose of the law is not to provide damages but rather to assure enjoyment of rights—here, pension rights. Assuring that employees receive rights under plans plainly "relates to" those plans.

[6] That the Texas law is preempted as applied in this case does not mean that it is preempted in all circumstances. ERISA does not apply to governmental plans, church plans, excess benefit plans, or certain payroll practices. *See* 29 U.S.C. § 1003(b); 29 C.F.R. § 2510.3-1(b). The Texas law could lawfully be applied to prevent alleged interference with attainment of benefits from any one of these sources, since the law would not in such circumstances "relate to" an ERISA-covered plan.

1. As explained above, the principal goal of Congress in enacting ERISA was to ensure that employee benefit promises made by employers are kept. *See Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 510. To that end, Congress secured the right of employees to participate in pension plans. *See* 29 U.S.C. § 1052. Recognizing, however, that mere participation in plans would in many instances not secure rights to benefits if benefits could be forfeited upon termination of employment prior to normal retirement age, Congress further provided for vesting of employee rights after a specific period of service. *See* 29 U.S.C. § 1053. Likewise, recognizing that vesting would in many instances be nugatory if employers designed plans so as to postpone any meaningful accrual of benefits until attainment of retirement age, Congress also required that pension benefits be accrued more or less ratably over the period of an employee's anticipated participation in a plan. 29 U.S.C. § 1054. And, recognizing that vested and accrued pension benefits are of little value to employees if no monies exist to pay them, Congress provided that an employer must make periodic contributions to fund any promised pension benefits on an actuarially-sound basis. *See* 29 U.S.C. § 1082. Finally, Congress established the plan termination insurance program, including employer-liability to the Pension Benefits Guaranty Corporation for underfunded pension plans. *See* 29 U.S.C. § 1362.

In creating this comprehensive and interrelated scheme of plan protections, however, Congress was concerned that there remained at least one way in which an unscrupulous employer might attempt to defeat an employee's attainment of benefits under a pension or other benefit plan: by discharging the employee before he had accumulated the service or otherwise satisfied the eligibility conditions necessary for rights to vest under the plan. *See, e.g.*, 119 Cong Rec. 30044 (1973), *reprinted in* 2 *Legislative History of the Employee Retirement Income Security Act of 1974* ("*Legislative History*") (Comm. Print 1976), at

1640 (remarks of Sen. Hartke) ("Is there not a direct, positive incentive for every employer to fire a person when he reaches 29 years and 364 days of age?"). Although it considered avoiding the problem by mandating graduated vesting (so that an employer would have no incentive to terminate an employee prior to vesting), *see* S. Rep. No. 383, 93d Cong., 1st Sess. 20 (1973), *reprinted in* 1 *Legislative History* 1063, 1088, Congress ultimately decided to address the problem through the enactment of Section 510 of ERISA. *See* S. Rep. No. 127, 93d Cong., 1st Sess. 35-36 (1973), *reprinted in* 1 *Legislative History* 587, 621-622 ("These provisions were added by the Committee in the face of evidence that in some plans a worker's pension rights or the expectations of those rights were interfered with by the use of economic sanctions or violent reprisals."); 119 Cong. Rec. 30044 (1973), *reprinted in* 2 *Legislative History*, at 1641 (remarks of Sen. Javits) ("The Senator from New Jersey (Mr. Williams) and I have included an express amendment on that score which would provide a remedy for any person fired such as is provided for a person discriminated against because of race or sex, for example. That is section 699A [as Section 510 was then numbered].").

Among other things, Section 510 bars employers from taking adverse employment actions for the purpose of interfering with an individual's attainment of benefits under a plan. *See* 29 U.S.C. § 1140. Section 510 prevents employers from circumventing, and thus gives meaning to, the vesting and other minimum standards established for and contained in pension plans. *See* 119 Cong. Rec. 30400 (1973) *reprinted in* 2 *Legislative History*, at 1836 (remarks of Sen. Hartke) ("The key to effective pension reform is early vesting, but a vesting provision is no better than the protection employees have against improper discharge—including layoff—discipline or other discrimination that puts an employee out of a job before vesting is achieved, thereby defeating his pension

claim."). In addition, it protects the attainment of rights under employee welfare benefit plans. *See, e.g.*, Vogel, *Containing Medical And Disability Costs By Cutting Unhealthy Employees: Does Section 510 Of ERISA Provide A Remedy?*, 62 Notre Dame L. Rev. 1024 (1987). The Congress enacting Section 510 must have understood it to "relate to" the plans that ERISA was seeking to protect and regulate.[7]

2. That Congress understood Section 510—and thus any comparable state law—to "relate to" ERISA-covered plans is conclusively confirmed by the parallel provision added to the Internal Revenue Code by Section 1012(a) of Title II of ERISA. *See* 120 Cong. Rec. 8861 (1974), *reprinted in* 3 *Legislative History*, at 4273 (comparing Section 510 and parallel Code provisions). Under that provision, which appears as Section 411(d)(1) of the Code, a plan may be required to provide an accelerated vesting schedule if "there has been a pattern of abuse under the plan (such as dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated . . . ." 26 U.S.C. §411(d)(1)(A). *See also* H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 276-277 (1974), *reprinted in* 3 *Legislative History* 4277, 4543-4544; H.R. Rep. No. 779, 93d Cong., 2d Sess. 63 (1974), *reprinted in* 2 *Legislative History* 2584, 2652. Such a direct regulation of the terms of a plan by a parallel provision of Title II of ERISA demonstrates that Congress understood Section 510, and thus any comparable state law, indirectly to have this relation to the plan as well.

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[7] Because of the obvious comparability between ERISA Section 510 and the Texas law, respondent has the unenviable task of persuading the Court that Section 510 does not "relate to" employee benefit plans—a proposition utterly at odds with the "common sense view" that has principally guided the Court in ERISA preemption cases. *See Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. at 740; *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. at 47, 48, 50.

3. Finally, there is one other structural indication that Congress understood Section 510 and any comparable state law to "relate to" ERISA-covered employee benefit plans. Section 510 provides that its terms are to be enforced pursuant to the provisions of Section 502 of ERISA. *See* 29 U.S.C. § 1140. Like the Texas law, Section 502 provides employment-related remedies such as reinstatement, back pay, front-pay, and damages equal to lost benefits for violations of Section 510 as a deterrent to ensure the payment of benefits under plans. *See, e.g.*, *Kross v. Western Electric Co.*, 701 F.2d 1238, 1244 n.7 (7th Cir. 1983); *Folz v. Marriott Corp.*, 594 F. Supp. 1007, 1015-1020 (W.D. Mo. 1984).

Importantly, in *Pilot Life Ins. Co. v. Dedeaux*, this Court held that interpretation of the provisions of Section 514 of ERISA—in that case, the so-called "savings clause" in Section 514(b)(2)(A)—"must be informed by the legislative intent concerning the civil enforcement provisions" of Section 502. 481 U.S. at 52. The Court reasoned (*id.* at 52, 54) that "[t]he civil enforcement scheme of § 502(a) is one of the essential tools for accomplishing the stated purposes of ERISA," and that "varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress." Thus, it held that the state law at issue in that case—a tort for alleged improper processing of benefits—must be preempted because it overlaps with a claim within the scope of Section 502. *See id.* at 57.

A state law like the one adopted in this case by the Supreme Court of Texas must similarly be preempted: It adds to the remedies available under Section 502 for a claim relating to purposeful interference with attainment of benefits under a plan, and thus "completely undermines" "[t]he policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme . . . ." *Id.* at 54. This is all the more true where the state law, as here, seeks to protect and

enforce substantive rights under a plan which were not created—and cannot be created—by state law.

C. The Legislative History Of ERISA Confirms That A State Law Making It Unlawful To Discharge An Employee For The Purpose Of Interfering With Attainment Of Pension Benefits "Relates To" A Plan And Is Preempted

The legislative history of ERISA confirms that a state law making it unlawful to discharge an employee for the purpose of interfering with attainment of pension benefits "relates to" ERISA-covered plans and is preempted. Specifically, the legislative history shows that Congress viewed Section 510 as an indispensable component of its comprehensive scheme for the protection and regulation of employee benefit plans; that Sections 502, 510 and 514 were intended to comprise a single interrelated and exclusive enforcement scheme to protect rights under plans against improper interference; and that, as ultimately formulated, Section 514 was understood to preempt, at a minimum, any state law attempting to regulate the subject matters treated by ERISA.

1. The bill that eventually became ERISA, H.R. 2, was first introduced in the House by Representative Dent on January 3, 1973. *See* H.R. 2, 93d Cong., 1st Sess. (1973), *reprinted in* 1 *Legislative History* 3. That bill did not contain any provision like Section 510 of ERISA. Moreover, while it contained a limited civil enforcement section, it allowed participants or beneficiaries to institute civil actions in either state or federal court. *See* 1 *Legislative History*, at 34. Finally, it preempted state laws only "insofar as they may now or hereafter relate to the fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans." *Id.* at 50-51.

On August 2, 1973, Representative Dent introduced H.R. 9824 as an alternative to H.R. 2. *See* H.R. 9824, 93d Cong., 1st Sess. (1973), *reprinted in* 1 *Legislative History* 686. Like H.R. 2, H.R. 9824 did not contain a

provision like Section 510 of ERISA. Moreover, like H.R. 2, H.R. 9824 authorized civil actions to be brought in either state or federal court. 1 *Legislative History* at 769-770. But H.R. 9824 did expand the remedies available in such actions to include, as ERISA now authorizes, injunctions against "any act or practice which violates any provision of this Act." *Id.* at 769. Moreover, it expanded the preemption provision to encompass both state laws that "may now or hereafter relate to the reporting and disclosure responsibilities of persons acting on behalf of employee benefit plans," and state laws "insofar as they may now or hereafter relate to the vesting of participant's benefits in employee benefit plans, the funding requirements for employee benefit plans or the adequacy of financing of employee benefit plans," and "affect the fiduciary responsibilities of those dealing with the plan and such laws conflict with any provision of this Act." *Id.* at 776-777.

On October 2, 1973, the House Committee on Education and Labor reported H.R. 2 with an amendment that essentially replaced the bill as introduced. *See* H.R. 2, 93d Cong., 1st Sess. (1973), *reprinted in* 2 *Legislative History* 2181. As reported, the civil action provision of H.R. 2—Section 503—was substantially the same as the civil action provision of H.R. 9824. *See* 2 *Legislative History*, at 2331-2338. As reported, the preemption provision of H.R. 2—Section 514(a)—was substantially the same as the preemption provision of H.R. 9824, except that it preempted all state laws addressing fiduciary responsibilities, whether they conflicted with ERISA's provisions or not. *See* H.R. Rep. No. 533, 93d Cong., 1st Sess. 17, *reprinted in* 2 *Legislative History* 2348, 2364. Finally, as reported, H.R. 2 for the first time included among its "Enforcement" rules a provision stating (H.R. 2, 93d Cong., 1st Sess. 161, *reprinted in* 2 *Legislative History* 2181, 2341) that:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right

> to which he is entitled under the provisions of the plan or this Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, or this Act. The provisions of section 503 shall be applicable in the enforcement of this section.

The committee report accompanying the bill described this provision as necessary "to completely secure the rights and expectations brought into being by this legislation." H.R. No. 533, 93d Cong., 1st Sess. 17 (1973), *reprinted in* 2 *Legislative History*, at 2364.

While H.R. 2 was awaiting floor action, the Committee on Education and Labor reported out yet another bill, H.R. 12906. *See* H.R. 12906, 93d Cong., 2d Sess. (1974), *reprinted in* 2 *Legislative History* 2761. The civil enforcement and non-interference with protected rights provisions of H.R. 12906 were nearly identical to the comparable provisions in H.R. 2. *See* 2 *Legislative History*, at 2916-2917. The preemption provisions of H.R. 12906, however, were reorganized to preempt state laws insofar as they "relate to the reporting and disclosure responsibilities, and fiduciary responsibilities, of persons acting on behalf of any employee benefit plan to which part 1 applies," and "insofar as they may now or hereafter relate to the nonforfeitability of participant's benefits in employee benefits plans, . . . the funding requirements for such plans, the adequacy of financing of such plans, portability requirements for such plans, or the insurance of pension benefits under such plans." *See* 2 *Legislative History*, at 2921-2922.

On February 26, 1974, the House considered both H.R. 12906 and H.R. 12855, a bill reported out of the Ways and Means Committee. It consolidated the two bills into a new H.R. 2, and passed that bill by a vote of 376 to 4 on February 28, 1974. As passed, the relevant provisions of H.R. 2—Sections 503, 510, and 514—were identical to the provisions of H.R. 12906. *See* H.R. 2, 93d Cong., 2d Sess. (1974), *reprinted in* 3 *Legislative History* 3898, 4047, 4053-4054, 4057-4058. Thus, as passed, H.R. 2 included among its benefit plan protections a provision making it unlawful for an employer purposefully to interfere with attainment of rights under plans; allowed that provision to be enforced in either federal or state court; and preempted only certain specifically designated subjects regulated by ERISA.

2. The principal pension reform bill considered in the Senate, S. 4, was introduced by Senator Williams on January 4, 1973. *See* S. 4, 93d Cong., 1st Sess. (1973), *reprinted in* 1 *Legislative History* 93. As was the case with the initial bill introduced in the House, S. 4 did not contain any provision comparable to Section 510 of ERISA. Moreover, Section 603 of S. 4 contained a broad civil enforcement provision entitling any participant or beneficiary to sue in state or federal court for "appropriate relief, legal or equitable, to redress or restrain a breach of any responsibility, obligation or duty of a fiduciary . . . ." 1 *Legislative History*, at 183-184. Section 604 entitled a participant or beneficiary to sue in state or federal court "to recover benefits due him . . . or to clarify his rights to future benefits under the terms of the plan . . . ." *Id.* Finally, Section 609 of S. 4 provided that, except for actions to recover benefits or clarify benefit rights, "the provisions of this Act . . . shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act . . . ." 1 *Legislative History*, at 186-188. A summary of the bill stated that Section 609 "provides that this Act supersedes state laws covering the same matters." *Id.* at 201.

On April 18, 1973, S. 4 was reported out of the Senate Committee on Labor and Public Welfare. S. 4, 93 Cong., 1st Sess. (1973), *reprinted in* 1 *Legislative History* 389. The civil enforcement provisions of the reported bill were essentially the same as the provisions of S. 4 as

introduced. *Id.* at 579-581. The preemption provision of the reported bill was identical in all relevant respects to Section 609 of the bill as introduced. *Id.* at 582-583. As reported, however, S. 4 provided as part of its "Enforcement" rules (1 *Legislative History*, at 585) that:

> Sec. 610. It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of the plan, this Act, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this Act, or the Welfare and Pension Plans Disclosure Act. The provisions of sections 602 [suits by the Secretary] and 603 shall be applicable. . . .

The Committee had heard testimony about instances in which employers had discharged employees to prevent them from vesting under plans. *See Retirement Income Security For Employees Act, 1973: Hearings on S. 4 and S. 75 Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare*, 93d Cong., 1st Sess. 350 (1973). The committee report stated that Section 609 was thus necessary "to completely secure the rights and expectations brought into being by this landmark reform legislation." S. Rep. No. 127, 93d Cong., 1st Sess. 36 (1973), *reprinted in* 1 *Legislative History* 587, 622.

On August 21, 1973, the Senate Finance Committee reported on S. 1179 as an alternative to S. 4. *See* S. 1179, 93d Cong., 1st Sess. (1973), *reprinted in* 1 *Legislative History* 780. This bill contained a provision for civil actions for breach of fiduciary duty. 1 *Legislative History*, at 950. The bill also authorized the Secretary of Labor to "hear and decide" disputes between participants or beneficiaries and plan administrators with respect to present and future benefits under the plans. *Id.* at 952. As discussed *supra* at 22-23, however, this bill provided for

graduated vesting and contained neither a preemption provision nor a non-interference provision.

On September 17, 1973, Senators Nelson, Long, Bennett, and Bentsen introduced Amendment 496 as a compromise between S. 4 and S. 1179 and as a substitute for S. 4. *See* Amendment No. 496, 93d Cong., 1st Sess. (1973), *reprinted in* 1 *Legislative History* 1271. The civil action provisions of this substitute bill—Section 693 and 694—were identical in all relevant respects to Sections 603 and 604 of S. 4 as originally reported. 1 *Legislative History*, at 1490-1492. Similarly, the preemption provision of the substitute bill—Section 699(a)—was identical to Section 609 of the bill as originally reported. *Id.* at 1493-1494. Finally, Section 699A, which addressed interference with employee rights, was substantially the same as Section 610 of the bill as originally reported (except that it added a prohibition against retaliation for testifying in any proceeding relating to the Act). *Id.* at 1496.

On September 19, 1973, the Senate took up consideration of this substitute bill. Senator Hartke applauded Section 610 of S. 4 as originally reported on the ground (119 Cong. Rec. 30374-75 (1973), *reprinted in* 2 *Legislative History*, at 1774-1775) that "[n]o vesting formula will produce real employee protection so long as employers are free to fire employees to defeat pension eligibility." He argued, however, that these claims should be heard by "an administrative tribunal with some expertise in the subject," and thus offered an amendment that would have authorized and directed the Secretary of Labor to hear and decide such disputes. *See* 119 Cong. Rec. 30400, *reprinted in* 2 *Legislative History*, at 1835-1836. Senator Williams, one of the two principal sponsors of the bill, agreed (*id.* at 1775-1776) that a non-interference provision was essential and pointed out (*id.*) that such a provision had been included in the bill. He thus concluded (*id.*) that "[t]he rights of the workers are

fully protected under this bill"; and he objected (*id.* at 1776, 1837) that the proposed administrative tribunal amendment would create an expensive new layer of "bureaucracy" and might lead to the "defeat [of] the present system of private pension plans that are on a voluntary basis."

The Senate agreed with Senator Williams, rejected Senator Hartke's proposed amendment, and, after other amendments and modifications not relevant here, passed the substitute bill (renumbered as H.R. 4200). *See* 119 Cong. Rec. 30428, *reprinted in* 2 *Legislative History*, at 1881-1882. As passed, the bill included a non-interference provision among its "Enforcement" provisions; authorized that provision to be enforced in either federal or state court; and, in contrast to the House bill, preempted state laws on all subjects addressed in ERISA.

3. A conference committee convened and agreed to retain the provisions authorizing civil actions by participants and beneficiaries, but decided to limit state court jurisdiction to actions involving claims for benefits and to confer exclusive jurisdiction on the federal courts over all other ERISA actions. *See* H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 75-77 (1974), *reprinted in* 3 *Legislative History* 4277, 4350-4352. The conference committee also agreed to retain in the bill's "Enforcement" provisions both a prohibition against interference with attainment of an employee's benefits and a requirement that the statute's civil action provisions be used in enforcing that prohibition. *See* 3 *Legislative History*, at 4350, 4355. Finally, the conference committee agreed to omit any reference to preemption of particular areas of regulation and instead to provide that state laws are preempted to the extent that they "relate to any employee benefit plan"; and the conference committee did so in the face of objections by the Administration that the preemption provisions of the House and Senate bills were "extremely vague" and "too broad," respectively. 3 *Legislative History*, at 4357; *Administration Recommendations to the House and Senate Conferees on H.R. 2 to Provide for Pension Reform* (April 1974), *reprinted in* 3 *Legislative History* 5047, 5145-5146.

4. In the ensuing floor debate, key members of Congress made clear the effect of the conference committee's actions. In the House, Representative Dent stated:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation . . . .
>
> The conferees, with the narrow exceptions specifically enumerated, applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof—including any professional society or association operating under code of law—which would affect any employee benefit plan described in section 4(a) and not exempt under section 4(b).

120 Cong. Rec. 29197 (1974), *reprinted in* 3 *Legislative History*, at 4670-4671.

Similarly, in the Senate, Senator Williams, after describing the various civil actions available to participants or beneficiaries under Section 502, stated (120 Cong. Rec. 29933 (1974), *reprinted in* 3 *Legislative History*, at 4745-4746):

> A further protection for employees is the prohibition against discharge, or other discriminatory conduct toward participants and beneficiaries which is designed to interfere with attainment of vested benefits or other rights under the bill, or to discourage

the exercise of any rights afforded by the legislation . . . .

It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law . . . .

Finally, Senator Javits remarked (120 Cong. Rec. 29935 (1974), *reprinted in* 3 *Legislative History*, at 4751) that:

The conference report represents a series of fundamental guarantees made to every American worker —guarantees which will secure for millions of Americans the expectation of a decent retirement income in combination with social security. These guarantees are nothing less than a pension "bill of rights" to which every worker—regardless of his occupation, salary or status—is entitled.

While the new law does not require employers to install a private pension plan, it would for the first time provide the following 14 basic rights to those working for an employer with a private pension plan.

He listed (*id.* at 4751-4753) under separate headings the basic minimum standards of ERISA with regard to participation, vesting, accrual, and so forth; and the fourteenth right listed (*id.* at 4753) was "Protection Of Pension Rights Against Employer Or Union Interference":

Every employee is to have the right, enforceable by the Secretary of Labor, to be free from interference with his pension benefits. This means that he cannot be discharged, fined, suspended, expelled or otherwise interferred with in order to prevent him from receiving pension benefits or attaining eligibility for pension benefits. There are stiff criminal penalties if this type of interference takes the form of force, fraud or violence or threats of this nature.

These 14 guarantees to American workers are at the heart of pension reform and provide much-needed and long-denied protections.

Senator Javits then concluded (120 Cong. Rec. 29942 (1974), *reprinted in* 3 *Legislative History*, at 4770-4771) that:

Both House and Senate bills provided for preemption of State law, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.

Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs.

5. This legislative history confirms that, in enacting Section 514, Congress understood that ERISA would preempt, among other things, any state law that, like Section 510 of ERISA, seeks indirectly to protect employee benefit rights by prohibiting employment decisions that might otherwise purposefully defeat employee benefit rights under ERISA-covered plans. As this Court has noted, "[t]he bill that became ERISA originally contained a limited pre-emption clause, applicable only to state laws relating to the specific subjects covered by ERISA."

Shaw v. Delta Air Lines, Inc., 463 U.S. at 98. As the Court has also noted, however, "[t]he Conference Committee rejected these provisions in favor of the present language, and indicated that the section's pre-emptive scope was as broad as its language." *Id.* at 98. There is no basis in the legislative history for suggesting that, in so expanding the scope of the preemption clause, the conference committee intended to allow state regulation of specific subjects covered by ERISA—such as Section 510's coverage of actions that purposefully "interfere" with attainment of benefits under a plan. On the contrary, the legislative history outlined above proves conclusively that Section 510 was viewed as a critical component of ERISA's minimum standards for plans, and indeed, was described as one of the "14 basic rights" conferred by ERISA; that Congress deliberately designed Sections 502, 510 and 514 to form an interrelated system for safeguarding employee rights under plans; and that Section 514's "relate to" language was understood to encompass, among other things, all subject matters regulated by the bill's "substantive and enforcement provisions"—such as the subject matters regulated by Sections 510 and 502 of ERISA.

D. Allowing State-Law Based Actions For Alleged Interference With Attainment Of Benefits Under ERISA-Covered Plans Would Impermissibly Burden The Maintenance Of Such Plans

The preemption of state laws that, like Section 510, seek indirectly to protect employee benefit rights by prohibiting employment decisions made for the purpose of defeating employee benefit rights is consistent with, and indeed mandated by, the purposes of Section 514 of ERISA. As the legislative history makes clear, Congress enacted that provision, and thereby preempted the field of employee benefit plan regulation, in order to save plans and plan sponsors from the administrative and financial burdens produced by multiple and potentially

conflicting regulations. *See Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 105 & n.25; *see also Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9-10 (1987). Allowing state law-based actions for alleged interference with attainment of benefits under ERISA-covered plans, however, would subject plans and plan sponsors to the precise burdens from which Congress sought to spare them.

On a procedure level, allowing such state-law based actions would potentially subject plan sponsors to multiple jurisdictional and procedural rules for similar kinds of interference claims. Whereas ERISA mandates that Section 510 actions be subject to the exclusive jurisdiction of the federal courts, state law-based actions of this type would be subject to no such limitation and could be filed in state courts; indeed, using state agencies, the states could establish the very administrative machinery for resolution of such claims that Congress rejected in ERISA as unduly burdensome. In addition, whereas ERISA requires that the Secretaries of Labor and Treasury be formally notified of Section 510 actions and allowed to intervene at their option, no such requirement exists for claims that may be filed under state law. Finally, whereas ERISA apparently anticipates that Section 510 claims will be tried by a court, *see Pane v. RCA Corp.*, 868 F.2d 631, 635-637 (3d Cir. 1989), similar if not identical state law-based claims may be subject to trial by jury. *See K Mart Corp. v. Ponsock*, 732 P.2d 1364, 1372-1373 (Nev. 1987).

On a substantive level, allowing state law-based actions of this type would mean that different substantive standards could potentially be applicable to the same employer conduct. For example, whereas an employer's decision is unlawful under Section 510 only if taken "for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan," the court below ruled (Pet. App. 5a) that the employer's decision is unlawful if "the principal reason" for it is a "desire to avoid" paying benefits; and while

it is unclear what the court's formulation will ultimately come to mean, it appears, as Justice Cook noted in dissent below (Pet. App. 10a), that the Texas standard allows an individual to avoid summary judgment on the basis of evidence that plainly would not be sufficient to state a triable claim under Section 510 of ERISA. Moreover, under the decision below (Pet. App. 5a), an employer's desire to avoid *contributing to* a pension fund is apparently sufficient to state a violation of Texas law (even if the employer's purpose was not to interfere with the attainment of benefits), thus raising the prospect that a reduction-in-force for valid economic reasons would violate Texas comon law if the savings were principally in pension funding costs; this is a gross variance from the substantive requirements of ERISA Section 510, and is a clear invasion of the separate funding requirements of ERISA. Other states could alter the substantive standards applicable to Section 510-type claims even further—and in vastly different ways.[8]

[8] Indeed, to appreciate the vista of mischievous state action that is possible here, one need only imagine decisions in which state courts decide to accept claims that federal courts have rejected under Section 510. *See, e.g., Hughes v. General Motors Corp.*, 852 F.2d 568, 1988 U.S. App. LEXIS 9637 (6th Cir. 1988), *cert. denied*, 109 S.Ct. 1535 (1989) (no violation of Section 510 where employer offered early retirement benefits to other employees shortly after plaintiffs voluntarily retired); *Varhola v. Doe*, 820 F.2d 809 (6th Cir. 1987) (no violation of Section 510 to provide shutdown pensions to employees who lost their jobs due to a sale but not to those who transferred to the employ of the buyer); *West v. Greyhound Corp.*, 813 F.2d 951 (9th Cir. 1987) (no violation of Section 510 where buyer refused to hire employees of seller unless they agreed to less generous employee benefits); *Bass v. Retirement Plan of Conoco, Inc.*, 676 F. Supp. 735 (W.D. La. 1988) (no violation of Section 510 where seller offered improved pension benefits to employees who remained after the sale but not to those who transferred to the employ of the buyer and had only deferred vested interests in seller's plan); *Nemeth v. Clark Equipment Co.*, 677 F. Supp. 899 (W.D. Mich. 1987) (no violation of Section 510 where pension cost was not a "but for" cause of employer's decision to close one plant rather than another); *International Union UAW Local 91 v. Park-Ohio Industries, Inc.*, 661 F. Supp. 1281 (N.D. Ohio 1987) (no violation of Section 510 where award of benefits distinguished between those who retired before or after a specific date).

Finally, on a remedial level, allowing state law-based actions of this type would expose plan sponsors to a variety of sanctions that ERISA apparently does not authorize. ERISA limits the remedies available in Section 510 cases to equitable relief such as reinstatement, back pay, front pay, and damages equal to lost benefits. *See Kross v. Western Electric Co.*, 701 F.2d 1238, 1244 n.7 (7th Cir. 1983); *Folz v. Marriott Corp.*, 594 F. Supp. 1007, 1015-1020 (W.D. Mo. 1984). It apparently does not allow for punitive and emotional distress damages awards. *See Varhola v. Doe*, 820 F.2d 809, 817-818 (6th Cir. 1987). By contrast, similar if not identical state law-based claims could lead to awards for emotional distress and punitive damages. *See, e.g., K Mart Corp. v. Ponsock*, 732 P.2d at 1373.

State law-based causes-of-action of these types—imposing potentially different substantive standards of conduct, with different procedural and proof requirements, as well as possible jury trials and punitive damages—would, contrary to the purposes of Section 514, have serious consequences for the participants of employee benefit plans. Plan sponsors seeking to avoid the lawsuits and concomitant administrative and financial burdens flowing from such a myriad of laws could simply decline to establish plans, or to eliminate any plans that they currently have in existence. Alternatively, they could delay terminating employees until after any benefit rights have vested; but, in doing so, they would be subjecting the plans to unanticipated financial demands and thus exposing other plan participants and beneficiaries (conceivably in all 50 states) to increased risks of non-payment. Finally, the plan sponsors could change the vesting or

qualification rules of the plans so as to decrease the likelihood of interference-type claims being asserted—either by increasing the years-of-service required to qualify for benefits (and thereby reducing the likelihood that a terminated employee would be close to qualifying for benefits), or by decreasing the years-of-service needed to qualify for such benefits (and thereby increasing the likelihood that a terminated employee would already have qualified for the benefits). In doing so, however, the plan sponsors would effectively be denying some employees benefits that they otherwise would have been eligible to receive, or be increasing the risk of non-payment to other plan participants (or requiring a reduction in the per-capita level of benefits provided to all participants). In short, allowing such laws to be imposed could lead plan sponsors to take actions seriously detrimental to the interests of some or all plan participants.[9]

Of course, as Congress recognized in enacting ERISA, the minimum standards of the statute, including Section 510, impose burdens of a similar kind and may lead plan sponsors to take comparable actions in response. *See, e.g.*, S. Rep. No. 383, 93d Cong., 1st Sess. 19 (1973), *reprinted in* 1 *Legislative History* 1063, 1087. But, as this Court recognized in *Pilot Life*, in enacting these minimum standards (including Section 510), Congress carefully

[9] An example readily illustrates this point. An employer in an industry where there is rapid turnover of employees within the first two years of employment, but relatively little thereafter, might wish to design its pension plan with 2-year cliff vesting. If this employer were located in Texas, however, and every termination within the first two years of employment raised the spectre of a state court action, tried before a jury, with a claim for punitive damages, then the employer likely would resort either to 5-year cliff vesting, so as to minimize the credibility of claims of employees who were terminated within the first two years, or to full and immediate vesting, so as to avoid the risk altogether. Alternatively, the employer might erect an artificial barrier to termination in Texas where the employee is close to vesting under the pension plan.

fashioned the substantive rights, the procedures, and the available remedies so that the burdens thereby created would be tolerable when balanced against the protections afforded to employees. *See* 481 U.S. at 54. *See also Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985). Congress carefully avoided creating rights, procedures, or remedies that would "force employers to end their plans or perhaps discourage other employers from beginning them." 120 Cong. Rec. 29209 (1974), *reprinted in* 3 *Legislative History*, at 4703-4704 (remarks of Rep. Collier). *See also* 120 Cong. Rec. 29951 (1974), *reprinted in* 3 *Legislative History*, at 4797 (remarks of Sen. Bentsen) ("The legislation achieves a fair balance between the need to provide adequate protection to existing pension plan participants and the important need to expand pension coverage. The legislation does this by setting minimum standards—not ideal standards—which would not impose such severe costs on employers so as to discourage the creation of new plans or actually force the termination of some existing plans."). The same cannot be said for the Texas law or whatever patchwork quilt of laws, procedures, and remedies other states might choose to impose. And that is precisely why Section 514 was enacted and must be applied to preempt laws of this type.[10]

E. The Arguments Advanced Against Preemption Are Without Merit

In his brief-in-opposition to the petition for certiorari, respondent strives mightily to avoid the inevitable conclusion that flows from the language, legislative history, and purpose of Section 514. But the arguments that he musters against preemption are without merit.

[10] As this Court has recognized, ERISA preemption was designed to free employers from the need to either reduce multistate plans to the lowest common denominator or establish separate plans for each state. *See Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 514, 524-525; *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 105; *Fort Halifax Packing Co. v. Coyne*, 482 U.S. at 10-13.

1. Mimicking the Supreme Court of Texas (Pet. App. 5a n.3), respondent first argues (Opp. Br. 6-7) that he is not seeking lost pension benefits and that "this fact alone is sufficient to defeat preemption." Of course, this argument conveniently ignores respondent's prayer in the trial court that, if successful, he be awarded "loss of employee benefits and profit sharing and retirement programs . . . ." J.A. 6, 15, 68. More importantly, however, this argument ignores the Court's conclusion in *Pilot Life* that ERISA-preemption extends beyond claims for benefits—specifically, that ERISA-preemption extends, at a minimum, to any claim that is redressable under Section 502 of ERISA. *See* 481 U.S. at 52-57 (preemption of state common law action seeking punitive damages for improper processing of a disability benefits claim). A claim for alleged interference with attainment of benefits fits squarely into the category of claims so redressable.

2. Respondent alternatively argues (Opp. Br. 7-18) that preemption is inappropriate because the Texas law regulates only the employment relationship between himself and petitioner, and neither requires the payment of benefits nor regulates the administrative activities of petitioner's pension plan. This argument is unfounded.

A state law may "relate to" an employee benefit plan, and thus be preempted by ERISA, even though it in terms regulates only the employment relationship (and not the terms or the administrative activities of the benefit plan). Just like Section 510 of ERISA, a state law may seek indirectly to protect employee benefit rights by directly regulating the employment relationship—i.e., by prohibiting employment decisions that might otherwise defeat employee benefit rights under a plan. Where the state law does so by "reference to" an ERISA-covered benefit plan, the law "relates to" an ERISA-covered plan and is preempted.[11]

[11] This case thus does not present the problem posed in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), where the Court held that a state law requiring plant closure severance payments neither related to an existing employee benefit plan nor called an ERISA-covered plan into being. The Texas law in this case, by its own terms, relates to an existing ERISA-covered pension plan.

Contrary to respondent's argument, a law may "relate to" an ERISA-covered plan and be preempted even though it directly imposes obligations on only the plan sponsor (*i.e.*, the employer). Many of ERISA's obligations are imposed only on the plan sponsor. *See, e.g.*, 29 U.S.C. § 1021(d)(1) (requiring employer to notify plan participants and beneficiaries if it fails to make a payment required to meet minimum funding standards); 29 U.S.C. § 1059(a) (requiring employer to maintain records with respect to employees and to furnish information to the plan administrator); 29 U.S.C. § 1082(c) (requiring employer to make minimum contributions to the plan); 29 U.S.C. § 1082(f) (imposing a lien for unpaid contributions on all property and rights to property of the employer); 29 U.S.C. § 1085b (requiring employer to post security for any increase in benefits when a plan is seriously underfunded); 29 U.S.C. § 1166(2) (requiring employer to notify plan administrator of events that qualify an employee, spouse, or dependent for continuation of health coverage); 29 U.S.C. § 1363 (imposing liability on the employer when an insufficiently funded plan is terminated); 29 U.S.C. § 1381 (imposing withdrawal liability on an employer that incurs a complete or partial withdrawal from a multiemployer plan). These disclosure, funding, and other obligations quite plainly "relate to" ERISA-covered plans, and the states clearly cannot regulate the employer-activities to which those obligations are directly addressed. The same conclusion should be true for Section 510 and the employer-activities to which it is directly addressed.

A law simply need not directly require the payment of benefits or regulate the administrative activities of the plan in order to "relate to" an employee benefit plan.

As this Court has repeatedly stated, "even indirect state action . . . may encroach upon the area of exclusive federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 525. Thus, the disclosure and funding rules cited above "relate to" employee benefit plans even though they do not directly require the payment of benefits or regulate the administrative activities of the plan. Similarly, the state statute at issue in *Metropolitan Life Ins. Co. v. Massachusetts*, which required insurance carriers—*i.e.*, third-parties—to include certain provisions in group insurance policies that they sold, "related to" ERISA-covered plans even though it did not directly require the payment of benefits or regulate the administration of claims. 471 U.S. at 739. Likewise, the statute held preempted in *Mackey v. Lanier Collections Agency & Service, Inc.*, which barred garnishment of benefits from ERISA-covered plans, "related to" such plans even though it did not require the payment of any benefit or actually impose an administrative requirement on such plans. 486 U.S. 825, 837-838 (1988). The Texas law at issue is similarly not exempt from preemption simply because it regulates the field of employee benefit plans in an indirect manner.

Indeed, the overwhelming number of federal and state appellate courts to address the specific question presented by this case have drawn this conclusion. With the exception of the court below, those courts have *uniformly* found that state non-interference laws like that of the State of Texas "relate to" ERISA-covered plans and are preempted. *See Fitzgerald v. Codex Corp.*, 882 F.2d 586, 588 (1st Cir. 1989); *Pane v. RCA Corp.*, 868 F.2d 631, 639 (3d Cir. 1989); *Sorosky v. Burroughs Corp.*, 826 F.2d 794, 799-800 (9th Cir. 1987); *Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208, 1215-1216 (8th Cir.), *cert. denied*, 454 U.S. 968 and 454 U.S. 1084 (1981); *Conaway v. Eastern Associated Coal Corp.*, 358 S.E.2d 423, 427 (W. Va. 1986); *Coontz v. Gordon Jewelry Corporation*, 439 N.W.2d 223, 226 (Iowa App. 1989). This

judicial consensus is deserving of the Court's endorsement here.[12]

CONCLUSION

The judgment of the court below should be reversed and remanded.

Respectfully submitted,

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[12] This judicial consensus stands in harmony with the cases cited by respondent in his brief-in-opposition (at 17-18). In those cases, the termination of employment was alleged to have violated state law for reasons entirely unrelated to any alleged intent to interfere with the attainment of rights under an employee benefit plan; loss of benefits was nothing more than a consequence of the termination and thus did not "relate to" the underlying plan. Those cases do not bear on cases such as this one—where the termination is alleged to violate a state law that expressly references and depends on the existence of an employee benefit plan, was created for the purpose and with the effect of protecting and enforcing an employee's rights under an employee benefit plan, and creates rights and remedies that encroach upon the comprehensive and exclusive scheme for enforcement under ERISA Sections 510 and 502.